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February 26, 2010

To: Supervisor Gloria Molina, Chair
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Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE

This memorandum contains an update on the status of several bills introduced this month that would grant California Environmental Quality Act (CEQA) exemptions to specific projects in order to generate jobs and stimulate the economy. Some of the more significant CEQA exemptions bills of County interest are discussed below.

Status of CEQA Legislation of County Interest

AB 1704 (Jeffries), as introduced on February 1, 2010, would exempt a project for the installation or replacement of a new pipeline for the distribution of recycled water within an improved public street, highway, or right-of-way from CEQA requirements. AB 1704 is currently in the Assembly Natural Resources Committee awaiting a hearing date. Support and opposition is currently unknown.

AB 2165 (Knight), as introduced on February 18, 2010, would exempt the activities or approvals of the High Desert System Multi-Service Ambulatory Care Center project from CEQA requirements. The bill contains an urgency clause. AB 2165 is currently at the Assembly Desk awaiting referral to a policy committee. Support and opposition is currently unknown.

ABX8 37/AB 1805 (Calderon and Nestande) and SBX8 42/SB 1010 (Correa and Cogdill), as introduced on February 10, 2010, are identical bills which would enact the

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CEQA Litigation Protection Pilot Program of 2010 that would require the Business, Transportation and Housing Agency (BTHA) to select 25 projects each year for the next five years and grant them immunity from the environmental and public participation requirements of CEQA. All four bills sunset on January 1, 2016 and contain urgency clauses.

These bills would exempt from judicial review: 1) a lead agency's decision to certify the Environmental Impact Report (EIR), or to adopt a mitigated negative declaration based on an initial study for the selected pilot projects; 2) a lead agency's and responsible agency's approval of the selected projects; and 3) the BTHA's selection of the projects to be in the pilot. Therefore, interested parties would lose the ability to sue a lead agency if they disagree with the agency's decision to certify an EIR, adopt a mitigated negative declaration, the decision to approve a project in the pilot program, and the selection of the project by the BTHA for the pilot program.

Of the 25 projects granted a CEQA exemption each year, 10 projects will come from the counties of Los Angeles, Imperial, Orange, Riverside, San Bernardino, and San Diego. Five projects will be located in the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, Santa Clara, Solano, and Sonoma, and five projects from the counties of Fresno, Kern, Kings, Madera, Merced, Sacramento, San Joaquin, Stanislaus, and Tulare. The remaining five projects per year will be located in the rest of the State.

For a project to qualify for the CEQA exemption, the lead agency must certify to the Secretary of the BTHA that the EIR will be certified within 12 months. If it is not certified the project must be replaced by an alternate project selected by the BTHA Secretary. The BTHA is required to hold at least one public hearing in each region to consider public comments on the selected projects in each region. In selecting projects, BTHA must consider the number and quality of jobs that will be created by the project; the amount of capital investment made by the project; and the balance between projects sponsored by public and private entities.

ABX8 37 is currently at the Assembly Desk awaiting referral to a policy committee. Support is currently unknown. It is opposed by the Planning and Conservation League.

AB 1805 is currently in the Assembly Natural Resources Committee awaiting a hearing date. Support is currently unknown. It is opposed by the Planning and Conservation League.

SBX8 42 was heard in the Senate Environmental Quality Committee on February 24, 2010, but was not taken up for a vote. The bill remains in Committee and may be voted on in the future. This measure is supported by the California Chamber of Commerce, American Council of Engineering Companies of California, Associated General Contractors, California Apartment Association, California Building Industry

Each Supervisor
February 26, 2010
Page 3

Association, California Business Properties Association, California Manufacturers and Technology Association, and Western Electrical Contractors Association. It is opposed by the Planning and Conservations League, California Coastal Coalition, California League of Conservation Voters, Heal the Bay, Natural Resources Defense Council, National Parks Conservation Association, California State Parks Foundation, and Sierra Club California.

SB 1010 is currently in the Senate Environmental Quality Committee awaiting a hearing date. Support is currently unknown. It is opposed by the Planning and Conservation League.

SBX8 56 (Hollingsworth), as introduced on February 12, 2010, would retroactively exempt from CEQA, projects funded in whole or in part by Proposition 1B (Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006) and Proposition 1E (Disaster Preparedness and Flood Prevention Bond Act of 2006), and streamline the Caltrans permitting process.

The bill would require local, regional and State permitting agencies to issue or deny a permit within 15 days of receiving an application from Caltrans or a local agency. If a permitting agency fails to act in 15 days, the permit application is deemed complete unless an ad hoc critical infrastructure review panel grants an extension. Caltrans or a local agency may file an appeal with this ad hoc panel if the permitting agency denies a permit or the permit imposes unreasonable conditions. The ad hoc panel may then waive the permit requirement, amend any condition, or issue a permit that has been denied.

SBX8 56 was set for hearing on February 24, 2010 in the Senate Environmental Quality Committee, but the author requested that it not be heard. The bill remains in the Committee and may be heard in the future. It is supported by the California Professional Association of Specialty Contractors, East County Construction Council, La Mesa Chamber of Commerce, Transportation California, and Hawthorne Machinery Company. It is opposed by the California League of Conservation Voters, Consumer Attorneys of California, Forests Forever, Planning and Conservation League, and Sierra Club California.

We will continue to keep you advised.

WTF:RA
MR:EW:sb

c: All Department Heads
Legislative Strategist